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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,122	10/12/2001	John Owens	INVA-FK	2411

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/977,122

Applicant(s)

OWENS, JOHN

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20, 23-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 and 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6 6) ☐ Other:

### **DETAILED ACTION**

The preliminary amendment filed October 16, 2002 has been entered. Claims 15-20, 23-26, and 28-30 have been entered. Claims 21, 22, and 27 have been omitted from the amendment, and are addressed in greater detail below in regard to claim objections. Claims 1-20, 23-26, and 28-30 are pending.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on January 30, 2002 has been considered by the examiner.

### ***Drawings***

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Specification***

The abstract of the disclosure is objected to because the expression "which tubular frame assembly" in line 1 is unclear. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claims 3, 21-25, and 27-30 are objected to because of the following informalities: in claim 3, the first occurrence of the term "the" in line 2 is unclear and appears to be a typographical error of the term "that." Also, claims 21, 22, and 27 do not appear in the amendment. However, claims 23-25 depend from claim 22 and claims 28-30 depend from claim 27. Consequently, the full limits of claims 23-25 and 28-30 cannot be determined. Claims 23-25 and 28-30 have not been considered on the merits and appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 7, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6, 7, and 12 each recite "the brackets" but do not specify the brackets to which the claims refer. Claims 1 and 9 define pivot brackets and claims 5 and 11 define seat brackets. The brackets recited in claims 6, 7, and 12 could be either the pivot brackets or the seat brackets. For the purposes of examination, the brackets recited in claims 6, 7, and 12 have been interpreted as referring to the seat brackets defined in claims 5 and 11.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Battiston US 6,371,142.

Battiston discloses a rollator/ambulatory support 10 having a frame that is open to a rear direction and including two side frames 12. See Figures 1 and 2A. Each side frame has a tubular front leg 14 member connected by a horizontal support to a tubular rear leg member 18, and a cross bar 24 extends between the front leg and the rear leg at a mid-section of the legs. The side frames are linked by a front brace 30. The front brace is curved forward of a plane defined by the longitudinal axes of the front leg members and has opposed distal ends that each include a pivotable connection 32 to a front leg. See Figure 4 and column 4, lines 11-14. The frame also includes a pair of spaced pivot brackets 41 that define an axis of rotation that is forward of the longitudinal axes of the front leg members. A rigid seat member 36 is mounted on each of the pivot brackets and the seat is supported on the cross bars by curved brackets 42 on opposed lateral sides of the seat.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battiston US 6,371,142 in view of Alulyan US 5,904,168.

The rollator/ambulatory support of Battiston does not have pivot brackets mounted to the front leg members and seat brackets formed integral with the seat, wherein the seat and seat brackets are molded.

Alulyan teaches that the practice of mounting the pivot brackets 71 of a rollator to the front leg members 39 was old and well known in the art at the time the invention was made. See Figures 1-3. From the teaching of Alulyan, providing the rollator of Battiston with pivot brackets mounted on the front leg members would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide a means of pivotally supporting the seat while minimizing the stresses placed on the cross members that provide lateral strength to the frame.

Forming the seat brackets integral with the seat represents a design choice that would have been obvious to one of ordinary skill in the art at the time the invention was made in order to reduce the number of steps required in assembling the rollator. Also, the examiner takes official notice that the process of molding was old and well known in

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the art at the time the invention was made. Forming the seat and seat bracket structure through molding would have been obvious to one of ordinary skill in the art at the time the invention was made in order to use a process that is familiar to manufacturing personnel.

Claims 15-20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battiston US 6,371,142 in view of Alulyan US 5,904,168 as applied to claims 1-8, 13, and 14 above, and further in view of Johnson US 5,558,358.

In addition to the apparatus described above, the rollator/ambulatory support of Battiston includes a padded region 26 on each substantially u-shaped horizontal support member, length adjustment means 20, 22 on each leg, a wheel 16 connected to each of the front legs, a locking mechanism 34 located on each of the side frames, wherein the locking mechanism is releasable to allow the side frames to pivot inwardly toward the seat when the seat is in the second position and at least one side frame can pivot approximately 180 degrees. See Figure 1 and column 4, lines 14-20.

However, Battiston does not have the pivotally mounted seat mounted to the front legs, a wheel on each of the rear legs, a set of brakes and at least one hand brake actuator, and a backrest connecting the side frames.

As discussed above, Alulyan teaches the practice of mounting the seat to the front legs through pivot brackets. See Figures 1-3. From the teaching of Alulyan, mounting the seat of Battiston to the front legs would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide a means

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of pivotally supporting the seat while minimizing the stresses placed on the cross members that provide lateral strength to the frame.

Johnson teaches the well known practice of providing wheels 18, 29 on each leg, including the rear legs, and using a set of brakes 20 with hand brake actuators to control the movement of the wheels. See Figure 1 and column 3, lines 45-48. Johnson also teaches the well known use of a backrest 44 on an ambulatory support.

From the teachings of Johnson, providing wheels on the rear legs of Battiston's apparatus would have been obvious to one of ordinary skill in the art at the time the invention was made in order to make the device easier to move. Providing Battiston's apparatus with a set of brakes and hand brake actuators would have been obvious to one of ordinary skill in the art at the time the invention was made so that the operator can control the movement of the wheels. Also, providing Battiston's apparatus with a backrest would have been obvious to one of ordinary skill in the art at the time the invention was made to improve the comfort of an occupant when sitting.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Frank, Schmerl, Brastow, Spies et al., Cranny, Wohlgemuth et al., Sung, Hara et al., and Kjell et al. disclose ambulatory supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff  
January 24, 2003



BRIAN L. JOHNSON  
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